

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

MOBILE TELECOMMUNICATIONS
TECHNOLOGIES, LLC

v.

CLEARWIRE CORPORATION.

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Case No. 2:12-CV-308-JRG-RSP

ORDER REGARDING DISPUTED MOTIONS IN LIMINE

Before the Court are Defendant's Motions in Limine (Dkt. 154) and Plaintiff's Motions in Limine (Dkt. 157) on which the parties have not yet agreed. The Court rules as follows.

MTEL's Motions in Limine (Dkt. 157)

1. Evidence that a court has excluded Walter Bratic's opinions in other cases:
GRANTED. The Court finds that allowing evidence that an expert has been excluded in other cases carries a significant risk of juror confusion and unfair prejudice. The cases relied upon by Clearwire are inapposite. *See, e.g., Ion, Inc. v. Sercel, Inc.*, Case No. 5:06-cv-236, Dkt. 343 at 5-6 (allowing cross examination as to relevant portions of Mr. Bratic's actual opinions in other cases, not – as Clearwire suggests – whether he had been previously excluded by the Court).
3. Effect that a damages award would have on Clearwire or Clearwire's customers:
GRANTED as agreed that present/future effect is inadmissible. This ruling does not prohibit Clearwire from presenting evidence regarding whether the gross revenue stream of the accused technology would support MTEL's proposed royalty; however, the Court notes that if Clearwire attempts to go beyond that to present that they would have been "unable to pay" due to other expenditures, or due to their financial situation in general, they open the door to MTEL presenting evidence regarding the rest of their financial situation (*see also* Defendant's Motion in Limine #2, below).

7. Evidence of non-infringing alternatives: **DENIED**. The Court permits Clearwire to present evidence regarding non-infringing alternatives, but notes that certain arguments may open the door for MTEL to present additional information (*see* Defendant's Motion in Limine #2, below).
8. Clearwire witness Eric Law: **DENIED** as to damages-related testimony, **GRANTED** as to non-damages testimony.
12. The Court defers to its ruling on MTEL's pending Motion to this effect.
13. The Court defers to its ruling on MTEL's pending Motion to this effect.
15. MTEL's suits against others: **GRANTED**.
16. The Court defers to its ruling on MTEL's pending Motion to this effect.

Clearwire's Motions in Limine (Dkt. 154)

- II. Evidence of Clearwire's investors, including Sprint's acquisition of Clearwire: **GRANTED** as to Clearwire's investors, and also as to Sprint's acquisition price but with an acknowledgement that Clearwire may open the door to this price information. The Court observes that this Motion pertains largely to the value of Clearwire's wireless spectrum. It appears that Clearwire intends to argue that rather than utilize the claimed invention, it could simply use its excess spectrum (in other words, it doesn't need to save bandwidth because it has plenty). This argument would make the value of that spectrum highly relevant. At the pretrial hearing, Clearwire's counsel argued that it is "basic economics" that the purchase price of the spectrum bears no rational relationship to the value of "use" of the spectrum. Further, Clearwire's counsel explicitly took the position that because it was not utilizing its entire spectrum, the use of that spectrum has no value. This proposition lacks a basis in either economics or reality. The Court observes that in the event that Clearwire takes the position that its "investment in spectrum minimizes the relative value of the claimed attributes of the '403 patent," the value of the spectrum becomes highly relevant, and that such an argument would thus open the door to evidence as to the value of that spectrum, including the purchase price at issue in this Motion.

VII. Section 1 – Expert testimony exceeding scope of report: **DENIED** as vague and premature, but the Court notes that parties are always limited to the scope of their expert reports.

Section 2 – **GRANTED** as agreed, that MTEL will not offer evidence regarding damages and infringement for MDHO, COMP, LTE, and/or 802.11n.

SIGNED this 29th day of January, 2014.



ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE